

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CASE NO. 04-98268-JB
	:	
ARMEKA MICHELLE TOWNSEND	:	
	:	
Debtor.	:	CHAPTER 13
	:	
	:	
MORTGAGE ELECTRONIC	:	
REGISTRATION SYSTEMS, INC.,	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
ARMEKA MICHELLE TOWNSEND,	:	
	:	
	:	
Respondent .	:	

ORDER

On October 28, 2005, debtor filed a *pro se* motion styled as “Emergency Motion to Reconsider Order of Dismissal Pursuant to Section 109(g) to Shorten Time for Notice and to Permit Re-filing.” The Court set the matter down for a hearing on November 1, 2005. The Chapter 13 Trustee, James H. Bone, David C. Whitridge, counsel for Mortgage Electronic Registration Systems, Inc. (hereinafter “MERS”), the debtor, and Karmel Davis, the debtor's attorney of record, appeared at the hearing. Debtor sought to have the Court modify an Order entered on September 20, 2005, dismissing the case under 11 U.S.C. § 109(g) and holding that debtor was ineligible to file another bankruptcy case for 180 days.

The case was properly dismissed pursuant to the Trustee’s Report filed on August 26, 2005, and the confirmation Order of January 20, 2005. Debtor had also filed a motion to

dismiss this case voluntarily on September 19, 2005, which filing would result in a § 109(g) dismissal. At the November 1, 2005 hearing, debtor stated that she sought to dismiss the case, because she understood that her mortgage company would work with her on her substantial mortgage arrearages if she would dismiss this bankruptcy case. Debtor further stated that the note and deed to secure debt was assigned shortly after this case was dismissed and that she had been unable to negotiate terms on the arrearages with the new holder of the mortgage claim. According to the debtor, her employment status and health has improved since dismissing this case, and she believed she could now make her mortgage payments and the payments required under this Chapter 13 plan. Debtor brought \$1,300.00 to the hearing to pay towards her Chapter 13 plan and post-petition mortgage arrearage.

The Chapter 13 Trustee announced that at the time this case was dismissed, debtor owed approximately \$4,800.00 under the Chapter 13 plan, and the Report filed by the Trustee showed that debtor had only made \$334.62 in plan payments. Counsel for MERS announced that at the time this case was dismissed, debtor owed approximately \$11,869.00 in post-petition mortgage payments on her principal residence. Mr. Whitridge also stated that his client had scheduled a foreclosure sale of debtor's residence for November 1, 2005, and in light of the substantial post-petition arrearage, he requested permission to proceed with the scheduled foreclosure proceeding. Debtor acknowledged that she had received two letters from the Chapter 13 Trustee, in May and July of 2005, notifying her that she was behind on her Chapter 13 plan payments and that this case would be dismissed with prejudice if the overdue payments were not made.

After hearing from all the parties and carefully considering the facts of the case, the Court orally granted MERS permission to cry the foreclosure on November 1, 2005, and gave

the debtor until November 16, 2005 to pay the overdue Chapter 13 plan payments totaling \$4,800.00, and the post-petition mortgage arrearages of \$11,869.00. The Court instructed debtor to file an affidavit stating that she had made the required payments by November 16, 2005, and if and only if this was done, the Court would set aside the dismissal Order and reopen the case.

On November 16, 2005, MERS filed a Notice of Failure to tender post-petition arrearages and request to deny debtor's Emergency Motion along with a Notice of Post-Petition Arrearages. The debtor has not responded to MERS' motion and has not filed an affidavit that she made the Chapter 13 plan payments or paid the post-petition mortgage arrearages. Accordingly, debtor's Emergency Motion cannot be granted and is hereby denied.

IT IS SO ORDERED, this _____ day November, of 2005.

JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

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